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10/826,074	04/15/2004	Tilman Herberger	57616/03-262	9986

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EXAMINER

VU, THANH T

ART UNIT	PAPER NUMBER
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2174

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/826,074	Applicant(s) HERBERGER ET AL.	
	Examiner Thanh T. Vu	Art Unit 2174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This communication is responsive to Amendment, filed 07/03/2007.

Claims 1-6, 9-16 are pending in this application. In the Amendment, claims 7-8 were cancelled, claims 15-17 were added, and claims 1, 2-4 and 12-14 were amended. This action is made Final.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foote et al. ("Foote", U.S. Pat. No. 2003/0160944) and Ubillos (U.S. Pat. No. 5,999,173).

Per claim 1, Foote teaches a method of aligning a video work with an audio work, wherein said audio and video works are configurable to be played in concert with each other, comprising the steps of:

a. automatically selecting a plurality of audio markers in said audio work, each of said selected audio markers having an audio time of occurrence associated therewith (figs. 1 and 2; *change detect* 120; [0037]);

b. identifying at least one video marker within said video work, each of said identified video markers having a video time of occurrence associated therewith (figs. 1-3; *change detect* 115; [0034]);

c. selecting one of said identified video markers and said video time of occurrence associated therewith (figs. 1 and 3; [0039]; [0042]);

d. selecting a video transition to apply at said selected video marker (figs. 1 and 3; [0039]; [0043]; [0052]);

e. automatically selecting one of said plurality of audio markers, wherein said time of occurrence of said selected audio marker is proximate to said video time of occurrence of said selected video marker (figs. 4-7; [0051]);

f. automatically synchronizing said video transition with said selected audio marker (figs. 4-7 *show aligning of video and audio data*; in addition see, [0051]-[0057]);

g. applying said synchronized video transition to said video work proximate to said video marker, thereby creating an aligned video work (figs. 4-7; [0051]); and,

h. storing said aligned video work on a computer readable medium ([0074]).

Although Foote teaches selecting video segment for inclusion into the final music video ([0077]; [0078]) and automatically synchronizing said video transition with said selected audio marker (figs. 4-7 *show aligning of video and audio data*; in addition see, [0051]-[0057]), Foote does not specifically teach automatically synchronizing said video transition with said selected audio marker by at least adjusting a time duration of said video transition. However, Ubillos teaches synchronizing said video transition with said selected audio marker by at least adjusting a time duration of said video transition (col. 8, lines 26-37; col. 11, lines 35-50; *user can select video transition to include in a video work and adjust a time duration of said video transition (i.e. adjust "in" and "out")*). Therefore, it would have been obvious to one of ordinary skill in the art

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at the time of the invention to include the teaching of Ubillos in the invention of Foote in order to allow a user to select special effects for inclusion into the final music video.

Per claim 2, the modified Foote teaches a method of aligning a video work with an audio work according to Claim 1, wherein step (a) comprises the steps of: (a1) selecting at least one audio criterion wherein each of said selected at least one audio criterion at least comprises a rule for identifying change points within said audio work (Foote, [0037], [0038]), (a2) using at least one of said selected audio criteria to identify at least two change points within said audio work (Foote, [0037], [0038])), (a3) selecting a plurality of said at least two identified change points, thereby identifying a plurality of audio markers within said audio work (Foote, figs. 3-7; ([0056]; [0063])).

Per claim 3, the modified Foote teaches a method of aligning a video work with an audio work according to Claim 1, wherein step (a) comprises the steps of:

(a1) selecting a plurality of audio criteria, wherein each of said selected audio criteria at least comprises a rule for identifying change points within said audio work, (a2) assigning a priority to each of said selected audio criteria (Foote [0037],[0038]), (a3) selecting a highest priority audio criterion from among said plurality of audio criteria according to said provided priority ordering,(a4)using said selected audio criterion to identify at least two change points within said audio work, (a5) selecting a plurality of identified change points, thereby identifying a plurality of audio markers within said audio work (Foote, figs. 3-7; ([0056]; [0063])).

Per claim 4, the modified Foote teaches a method of aligning a video work with an audio work according to Claim 1, wherein step (e) comprises the steps of:

(e1) choosing one of said plurality of audio markers, wherein said time of occurrence of said selected audio marker is proximate to said video time of occurrence of said video marker (Foote , figs. 4-7 *show aligning of video and audio data*; in addition see, [0054]; [0056]; [0063]),

(e2) determining from a provided criterion for determining whether an audio marker is suitable for use with a selected video marker whether said chosen audio marker is suitable for use with said selected video marker (Foote, figs. 4-7; [0054]; [0056]; [0063]),

(e3) if said chosen audio marker is determined to be suitable for use with said selected video marker, selecting said chosen marker (Foote, figs. 4-7; [0054]; [0056]; [0063]),

(e4) if said chosen audio marker is determined not to be suitable for use with said selected video marker according to said criterion, performing steps (e1) through (e3) until either one of said chosen audio markers is found to be suitable or until all of said plurality of audio markers have been chosen (Foote, figs. 4-7; [0054]; [0056]; [0063]) and,

(e5) if after performing steps (e 1) through (e4) none of said plurality of audio markers is suitable for use with said selected video marker, taking no further action with respect to the selected video marker (Foote, figs. 4-7 *show aligning of video and audio data*; in addition see, [0054]; [0056]; [0063]).

Per claim 5, the modified Foote teaches a method of aligning a video work with an audio work according to Claim 1, comprising the further steps of: (i) reading said stored aligned video work from said computer readable media; and (j) playing said aligned video work on a display device ([0074]).

Per claim 6, the modified Foote teaches a method of aligning a video work with an audio work according to Claim 1, wherein said computer readable medium is selected from the group

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consisting of computer RAM, non-volatile RAM, magnetic disk, a RAM card, optical disk, magneto-optical disk, and a floppy disk ([0074]).

Per claim 15, Foote teaches the method according to Claim 9, but does not specifically teach wherein step (d) comprises the steps of: (dl) selecting a video transition to apply at said selected video marker, said selected video transition having at least one transition parameter associated therewith, wherein said at least one transition parameter comprises a transition starting time and a transition ending time and wherein step (f) comprises the step of: (fl) synchronizing said video transition with said selected audio marker by modifying at least one of said transition starting time and said transition ending time.

However, Ubillos teaches wherein step (d) comprises the steps of:

(dl) selecting a video transition to apply at said selected video marker, said selected video transition having at least one transition parameter associated therewith, wherein said at least one transition parameter comprises a transition starting time and a transition ending time (col. 8, lines 26-37; col. 11, lines 35-50; *user can select video transition having starting time "in" ending time "out"*) and wherein step (f) comprises the step of:

(fl) synchronizing said video transition with said selected audio marker by modifying at least one of said transition starting time and said transition ending time (see fig. 3, col. 8, lines 25-37).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the teaching of Ubillos in the invention of Foote in order to allow a user to select special effects for inclusion into the final music video.

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Per claim 16, the modified Foote teaches the method according to Claim 9, wherein said video transition is a video effect (Ubillos, col. 11, lines 45-50).

Per claim 17, the modified Foote teaches A method according to Claim 16, wherein said video effect is selected from a group consisting of a wipe, a fade, a cross fade, a zoom in, a zoom out, a push, an overlap, and an iris dilation (Ubillos, col. 11, line 56-60).

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 9-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Foote et al. (“Foote”, U.S. Pat. No. 2003/0160944).

Per claim 9, Foote teaches a method of aligning a video work with an audio work, wherein said audio and video works are configurable to be played in concert, comprising the steps of:

- a. determining a plurality of audio markers in said audio work (figs. 1 and 2; *change detect 120*; [0037]);
- b. automatically identifying at least one video marker within said video work, wherein said at least one video marker corresponds to a discontinuity in said video work (figs. 1 and 2; *change detect 120*; [0037]);
- c. selecting one of said identified video markers (figs. 1-3; *change detect 115*; [0043]);

d. selecting a video transition to apply at said selected video marker, said selected video transition having at least one transition parameter associated therewith (figs. 1-3; *change detect* 115; [0043]);

e. selecting one of said plurality of audio markers, said selected audio marker being proximate in time to said selected video marker (figs. 4-7; [0051]);

f. synchronizing said video transition with said selected audio marker by modifying at least one of said selected transition parameters (figs. 4-7; [0051]; [0071]);

g. applying said synchronized video transition to said video work proximate to said selected video marker according to said modified transition parameter (figs. 4-7 *show aligning of video and audio data*; in addition see [0051]; [0071]); and,

h. playing in concert said aligned video work and said audio work, thereby creating an aligned multimedia work ([0073]; [0074])

Per claim 10, Foote teaches a method of aligning a video work with an audio work according to Claim 9, further comprising the step of: i. writing said aligned video work and said audio work to a computer readable medium ([0074]).

Per claim 11, Foote teaches a method of aligning a video work with an audio work according to Claim 10, wherein said computer readable medium is selected from the group consisting of computer RAM, non-volatile RAM, magnetic disk, a RAM card, optical disk, magneto-optical disk, and a floppy disk [0074]).

Claims 12-14 are rejected under the same rationale as claims 2-4 respectively.

Response to Arguments

Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

As per claims 9-14, applicant's primary argument is that Foote does not teach "an audio and video work may be synchronized by modifying parameters associated with a video transition that has been placed into the work" (page 20 of Remarks).

The examiner does not agree for the following reasons:

During patent examination, the pending claims must be "given >their< broadest reasonable interpretation consistent with the specification." > In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

In this case, Foote reads on the claim language of selecting a video transition to apply at said selected video marker, said selected video transition having at least one transition parameter associated therewith (figs. 1-3; *change detect 115*; [0043]; [0052] *shows selecting of transitions points*), and synchronizing said video transition with said selected audio marker by modifying at least one of said selected transition parameters (figs. 4-7; [0051]-[0053]; *shows synchronizing of video and audio signal by adjusting transition points by truncating video segment to fit within a audio segment*).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh T. Vu whose telephone number is (571) 272-4073. The examiner can normally be reached on Mon-Thur and every other Fri 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine L. Kincaid can be reached on (571) 272-4063. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available

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through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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